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POH CHAT JING v. CHUA JOO CHENG

HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM J
[CIVIL SUIT NO: 22 NCVC-1090-09-2012]
10 OCTOBER 2014

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AGENCY: *Agent – Estate agent – Whether plaintiff was appointed as defendant's agent for sale of land – Whether valid letter of appointment executed – Whether agency wrongfully terminated by defendant before sale of land – Whether plaintiff entitled to commission from sale of land or damages – Whether advocate and solicitor could claim for services rendered as estate agent – Whether contract of agency void under Valuers, Appraisers and Estate Agents Act 1981 – Valuers, Appraisers and Estate Agents Act 1981 ss. 2, 22B(1) & 22C(1)(d)*

C

CONTRACT: *Breach – Claim for services rendered – Advocate and solicitor claiming payment for services rendered as estate agent – Whether plaintiff appointed as defendant's agent for sale of land – Whether advocate and solicitor could claim for services rendered as estate agent – Whether contract of agency void under Valuers, Appraisers and Estate Agents Act 1981 – Contracts Act 1950 s. 158*

D

CONTRACT: *Service contract – Services rendered, claim for – Advocate and solicitor claiming payment for services rendered as estate agent – Whether plaintiff appointed as defendant's agent for sale of land – Whether advocate and solicitor could claim for services rendered as estate agent – Whether contract of agency void under Valuers, Appraisers and Estate Agents Act 1981 – Valuers, Appraisers and Estate Agents Act 1981 ss. 2, 22B(1) & 22C(1)(d)*

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CONTRACT: *Void contract – Duress – Whether letter of appointment executed by defendant under duress – Defendant an advocate and solicitor – Failure to make police report – Whether duress proven*

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The plaintiff, an advocate and solicitor, was introduced to the defendant (also and advocate and solicitor) by a mutual friend. The defendant had casually told the plaintiff that she had lands in Johor Bahru ('the lands') which she intended to sell. It was the plaintiff's case that the defendant signed a letter of appointment dated 20 July 2011 ('the alleged LOA') giving the plaintiff exclusive appointment to be the defendant's agent, for a period of 12 months, to conduct and manage the sale of the lands. Under the alleged LOA, in the event of a successful sale, the plaintiff would be given a 'professional fee' of '2% of the purchase price plus 6% GST, payable upon execution of the sale & purchase agreement (SPA)'. The plaintiff also relied on a second letter of appointment dated 2 August 2011 ('the second LOA') where the defendant had appointed him as 'the only agent' 'to conduct and manage all matters concerning the sale'. The plaintiff further relied on an amended second letter of appointment dated 2 August 2011 ('the amended second LOA') where the defendant appointed him as 'the only and sole agent' 'to conduct and manage all matters concerning the sale' (both to be referred to as the 'two LOA dated 2 August 2011'). The plaintiff also claimed that there were other oral terms

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of the agreement between the plaintiff and the defendant on this matter. According to the plaintiff, he had managed to secure a potential sale of the lands to Dijaya Corporation Bhd ('Dijaya'). The plaintiff claimed that on 4 October 2011, the defendant asked the plaintiff for the return of the signed alleged LOA and she then tore the alleged LOA saying that the lands were not for sale anymore. Thus, the proposed sale to Dijaya could not proceed. However, the plaintiff later found out that the lands had been subsequently sold to Dijaya through Aliran Peluang Sdn Bhd, a subsidiary company of Dijaya. The plaintiff thus claimed for wrongful termination of his appointment which caused him to suffer losses. The defendant, on the other hand, claimed that she had never agreed with the plaintiff to appoint him as an exclusive agent for 12 months and she denied having signed the alleged LOA. The defendant contended that she did, however, sign a document similar to the alleged LOA on a thermal paper, but under duress by the plaintiff ('the thermal letter'). The issues that arose for determination were: (i) whether there was a written or oral agreement ('agreement') between the parties to appoint the plaintiff as the agent for the sale of the lands; (ii) if there was an agreement, what were the terms of the agreement; (iii) whether the agreement was valid and enforceable in law; (iv) whether there was a breach or non-performance of the agreement; (v) whether the defendant was entitled to terminate the appointment of the plaintiff under the agreement; (vi) whether the plaintiff was entitled to the professional fee of 2% plus 6% GST from the proceeds of sale to Aliran Peluang, and/or damages by reason of the defendant's breach of the agreement; and (vii) whether the plaintiff's claim was barred by s. 22C of the Valuers, Appraisers and Estate Agents Act 1981 ('VAEA 1981').

Held (dismissing plaintiff's claim with costs):

(1) The court was unable to attach any weight to the thermal letter. The document was not produced in court for the court's scrutiny. Moreover, the circumstances under which the defendant purportedly signed the thermal letter were highly improbable and hard to believe. The defendant was an advocate and solicitor. If indeed, the defendant was made to sign the thermal letter under duress by the plaintiff, who was alleged to have had locked her in his car, the defendant would have immediately after that lodged a police report against him. (paras 42 & 43)

(2) The original of the alleged LOA produced in court was not signed by the plaintiff and the defendant. Without proof of the signatures by the plaintiff and the defendant, the court was unable to accept the alleged LOA as having been duly executed by both parties in order to constitute a legally binding agreement. Based on the evidence, it was highly improbable that the defendant did execute the alleged LOA, as alleged by the plaintiff. The evidence was also inconclusive and not in support

of the plaintiff's case that the defendant tore up the original alleged LOA. Thus, the plaintiff failed to discharge his burden of proving that he was duly appointed to be the exclusive agent for the defendant under the original alleged LOA. (paras 46, 63 & 67)

(3) The two LOA could not amount to a formal and contractually binding LOA as they were akin to a notice to whoever it concerned that the plaintiff was appointed by the defendant as her only and sole agent. They were not a formal and proper contract that was drawn up, signed and executed by both parties. There was no signature of the plaintiff proving that he duly executed such agreement. The elements required for the formation of a contract, namely, offer, acceptance, consideration and intention to create legal relations, had not been proved by the plaintiff in respect of the two LOA. There was no concrete or satisfactory evidence of any oral terms agreed upon by the plaintiff and the defendant which could form the substance and basis of a legally binding and enforceable contract. (paras 73 & 78)

(4) The eventual sale of the defendant's lands to Aliran Peluang involved a different set of lots. Aliran Peluang was a different legal entity from Dijaya. Since the plaintiff played no role in the sale of the defendant's lots of land to Aliran Peluang, the plaintiff was not the effective cause of such sale. Therefore, the plaintiff was not entitled to the sums claimed. (para 96)

(5) Even if there was an exclusive appointment of the plaintiff by the defendant to be her only and sole agent for 12 months from 20 July 2011, there was no provision in the alleged agreement that prohibited the defendant from terminating such appointment. The plaintiff's appointment was terminable at any time. The plaintiff's own evidence showed that when the defendant tore the letter on 4 October 2011, she also said that the lands were not for sale. The defendant's act and declaration had effectively terminated whatever agency or commission contract that existed between both parties. (para 109)

(6) The plaintiff took a business risk in doing any preliminary work for the defendant. Unfortunately for him, when the defendant terminated his agency on 4 October 2011, the plaintiff could no longer carry out his full obligations as the defendant's agent under the alleged agreement. Therefore, the plaintiff could not rely on s. 158 of the Contracts Act 1950 for his claim. He had no right to claim the remuneration and professional fees sought. (para 109)

(7) The plaintiff was an advocate and solicitor. He was not a registered agent under the VAEA 1981. The plaintiff had undertaken the work of an estate agent within the meaning of 'estate agency practice' under s. 2 of the VAEA 1981. Under s. 22C(1)(d), the plaintiff was barred from

recovering any remuneration for any professional advice or services rendered as an estate agent since he was not a registered estate agent under s. 22B(1) of the VAEA 1981. (para 121)

(8) The consideration of professional fee of 2% of the purchase price plus 6% GST was forbidden by the VAEA 1981, and it was fraudulent since the plaintiff was not a registered estate agent under the VAEA 1981. The court could take judicial notice of such illegality even though it was not pleaded. (para 135)

Case(s) referred to:

Asia Television Ltd & Anor v. Viwa Video Sdn Bhd & Other Cases [1984] 2 CLJ 80; [1984] 1 CLJ (Rep) 72 FC ***(refd)***

Chung Khiaw Bank Ltd v. Hotel Rasa Sayang Sdn Bhd & Anor [1990] 1 CLJ 675; [1990] 1 CLJ (Rep) 57 SC ***(refd)***

Curragh Investment Ltd v. Cook [1974] 1 WLR 1559 ***(refd)***

Lim Kar Bee v. Duofortis Properties (M) Sdn Bhd [1992] 3 CLJ 1667; [1992] 1 CLJ (Rep) 173 SC ***(refd)***

Luxor (Eastbourne) Limited (In Liquidation) And Others v. Cooper [1941] AC 108 HL ***(foll)***

Prickett v. Badger [1856] 1 CBNS 296 ***(dist)***

Tang Chiok Sing v. Lian Fatt Sawmill Co [1976] 1 LNS 155 FC ***(dist)***

Theresa Chong v. Kin Khoon & Co [1976] 1 LNS 165 FC ***(refd)***

Legislation referred to:

Contracts Act 1950, ss. 24, 158

Evidence Act 1950, s. 63

Rules of Court 2012, O. 34 r. 2(2)(d)

Valuers, Appraisers and Estate Agents Act 1981, ss. 2, 22B(1), 22C(i)(c), (d), 30

Other source(s) referred to:

Cheshire, Fifoot & Furmston's Law of Contract, 13th edn, Chapter 13, pp 28-48

For the plaintiff - Mathew Thomas Philip (Clinton Tan Kian Seng with him); M/s Thomas Philip

For the defendant - Yap Boon Hau (Dylan Chiam with him); M/s Mah-Kamariyah & Philip Koh

Reported by Amutha Suppayah

JUDGMENT

Yeoh Wee Siam J:

Brief Facts

[1] The plaintiff is an advocate and solicitor. Prior to his practice in such capacity, he was a negotiator for the sale of real estate property.

[2] The defendant was introduced to the plaintiff by one "Sister Nancy", a mutual friend in their Buddhist circle of friends, during a trip to Sri Lanka on 28 June 2011 for religious and spiritual purposes. The defendant had casually told the plaintiff that she had lands in Johor Bahru which she intended to sell, but she was involved in litigation over four lots of land.

[3] At the material time, the defendant was the registered owner of 16 individual lots of land at Sungai Danga, Mukim of Pulai, Johor. Out of the 16 lots of land ("the 16 lots" or "the lands"), four lots were involved in litigation involving the defendant.

[4] The four litigation lots are:

Lot 3437 (CT9699), Lot 3438 (CT9700), Lot 3439 (CT9701), and Lot 3444 (CT9703) (the "litigation lots").

[5] The remaining 12 lots are:

Lot 3432 (CT9694), Lot 3433 (CT 9695), Lot 3434 (CT9696); Lot 3435 (CT9697), Lot 3436 (CT9698), Lot 3440 (CT9702); Lot 3441 (CT9703), Lot 3442 (CT9704), Lot 3443 (CT9705); Lot 3445 (CT9707), Lot 3446 (CT9708), and Lot 3447 (CT9709) ("the subject property" or "the 12 lots").

[6] It is the plaintiff's case that, on 20 July 2011, the defendant signed a letter of appointment dated 20 July 2011 ("the alleged LOA") (CBOD Pt C pp. 58 and 59, now exhs. P1A and P1B) at the defendant's house in Muar, Johor. Pursuant to the alleged LOA, the plaintiff was given an exclusive appointment to be the defendant's agent, for a period of 12 months from the date of the letter to conduct and manage the sale of the subject property. In the event of a successful sale, the plaintiff would be given a "Professional Fee" of "2% of the purchase price plus 6% GST, payable upon execution of the sale and purchase agreement (SPA)". The "price" was RM26 psf.

[7] The plaintiff further relied on:

(1) a second letter of appointment dated 2 August 2011 ("the second LOA") (CBOD1 Pt A p. 1), where the defendant appointed him as "the ONLY agent" "to conduct and manage all matters concerning the sale" of 11 lots out of the 16 lots for the "Selling Price" of RM36 psf;

(2) an amended second letter of appointment dated 2 August 2011 ("the Amended second LOA") (CBOD1 Pt A p. 2), where the defendant appointed him as "the ONLY AND SOLE AGENT" "to conduct and manage all matters concerning the sale" of 12 lots out of the 16 lots for the "Selling Price" of RM36 psf, (both to be referred to as the "two LOA dated 2 August 2011"); and

(3) other oral terms of the agreement between the plaintiff and the defendant.

[See paras. 6, 7 and 8 of the statement of claim ("SOC")].

[8] The plaintiff alleged that upon his exclusive appointment, he began to perform his obligations under the agreement by requesting Choy Heng Min ("Choy") (PW3), a licensed real estate agent, and Eric Tan Soon Hee ("Eric Tan") (PW4), a negotiator, to identify potential purchasers for the subject property.

[9] Choy, who personally knew Dato' Tong Kien Onn ("Dato' Tong") (PW1), who was then the Managing Director of Dijaya Corporation Berhad ("Dijaya"), approached Dato' Tong to sell the subject property to Dijaya.

[10] Sometime around the end of July 2011, Dato' Tong requested a meeting with the plaintiff and Choy to verify that the plaintiff was properly appointed and authorised by the defendant to conduct and manage the sale of the subject property.

[11] The plaintiff alleged that the defendant then faxed the two LOA ie, the second LOA and the amended second LOA dated 2 August 2011, to the plaintiff.

[12] On 2 August 2011, the plaintiff and Choy met Dato' Tong and showed the letter from Choy's company, City Real Properties ("cover letter") (CBOD1 Pt B p. 46), which enclosed the second LOA dated 2 August 2011 (CBOD1 Pt A p. 1), "confirming Mr. James Poh's appointment/mandate to handle the above mention properties".

[Note: the plaintiff is also known as James Poh). It is to be further noted here that the heading to Choy's cover letter (CBOD1 Pt B p. 46) is only in respect of 11 lots, and not 12 lots. The subject property comprised 12 lots. Lot 3434 which is in the map of the 12 lots/subject property (CBOD4 Pt B p. 4) is not mentioned in Choy's cover letter].

[13] Dato' Tong instructed Low Shim Boon (PW2), Senior Manager of Dijaya, to conduct due diligence on the subject property. After due diligence, PW2 reported to Dijaya that the subject property was worth further consideration.

[14] Tan Seng Chye (PW6), an Executive Director of Dijaya, testified that he met Choy and visited the subject property at least three times. He also testified that the due diligence report was positive and Dijaya's land committee recommended Dijaya to purchase the subject property.

[15] Low Yung Hui (DW2), the Deputy General Manager Business Development of Dijaya, confirmed that Dijaya's land committee had looked into the subject property in 2011 and that they were "interested to look at it further".

[16] According to the plaintiff, on 4 October 2011, the plaintiff and the defendant met at Sister Nancy's house. The defendant asked the plaintiff for the return of the signed alleged LOA dated 27 October 2011. The plaintiff gave it back to the defendant who then tore the LOA and said "This land is not for sale".

[17] Thereafter, the defendant refused to communicate with the plaintiff. The plaintiff alleged that as a result, Choy was unable to finalise the sale of the subject property to Dijaya.

A **[18]** The plaintiff contended that on 25 June 2012, Dijaya announced that it had purchased the subject property (excluding Lot 3436) through Aliran Peluang Sdn Bhd ("Aliran Peluang"), a subsidiary company of Dijaya. The subject property (excluding Lot 3436) was sold to Dijaya for the price of RM105,069,016.90.

B **[19]** The plaintiff alleged that the defendant had used the plaintiff to engage Choy to approach Dijaya, but later terminated the plaintiff's appointment to then sell the subject property to Dijaya through different individuals.

[20] The plaintiff contended that he was the procuring cause and/or *causa causans* of the sale of the subject property (excluding Lot 3436) to C Dijaya. The plaintiff is therefore claiming for the wrongful termination of his appointment which has caused him to suffer, *inter alia*, the following losses:

(1) A sum of 2% of the purchase price of the subject property plus 6% of GST amounting to RM2,227,463.17; or

D (2) Alternatively, damages for the loss of opportunity to carry out the appointment, and to prepare and carry out the Sale and Purchase Agreement regarding the subject property (excluding Lot 3436).

Issues

E **[21]** The main issues are:

(1) Whether there was a written and/or oral agreement ("agreement") between the plaintiff and the defendant to appoint the plaintiff as the sole representative and/or agent to conduct and manage the sale of the subject property;

F (2) If there is an agreement between the plaintiff and the defendant, what are the terms of the agreement;

(3) Whether the agreement is valid and enforceable in law;

(4) Whether there is a breach or non-performance of the agreement by G either party;

(5) Whether the defendant is entitled to terminate the appointment of the plaintiff under the agreement;

(6) Whether the plaintiff is entitled to the professional fee of 2% plus 6% H GST from the proceeds of sale of part of the defendant's property that was sold to Aliran Peluang, a subsidiary company of Dijaya, and/or damages by reason of the defendant's breach and/or non-performance of the Agreement.

(7) Whether the plaintiff's claim is barred by s. 22C of the Valuers, I Appraisers and Estate Agents Act 1981.

Consideration And Findings

Regarding Issues (1), (2) And (3)

[22] The plaintiff is relying on the alleged LOA dated 20 July 2011, and the two LOA dated 2 August 2011, and other oral terms of the agreement which were purportedly agreed upon between the plaintiff and the defendant.

[23] The defendant's defence is that she had never agreed with the plaintiff to appoint him as an exclusive agent for 12 months and she denied having signed the alleged LOA dated 20 July 2011.

[24] Instead of signing the alleged LOA dated 20 July 2011, the defendant contended that she did, however, sign a document similar to the alleged LOA dated 20 July 2011 on a thermal paper, but with amendments ("the thermal letter"). The thermal paper was signed by the defendant on 17 July 2011 under undue duress by the plaintiff [para. 11.3 of the statement of defence ("SOD")].

Whether The Defendant Signed The Thermal Letter

[25] The defendant gave evidence on the following circumstances under duress in the plaintiff's car:

[26] On the 17 July 2011, the defendant met up with Sister Nancy at the latter's house in Taman SEA, Petaling Jaya. She went there to receive blessings from Monk Ambanpola, who came to visit from Sri Lanka.

[27] The defendant was advised by Monk Ambanpola that she should focus on her litigation suit bearing Suit No. 23-97-2011, in which she was the defendant, and that she should let the plaintiff manage the sale of her lands.

[28] Out of respect to the advice given by Monk Ambanpola, the defendant agreed to talk to the plaintiff on his possible assistance.

[29] The defendant was taken by the plaintiff in his car to Restoran Yut Kee. The defendant is a practising vegetarian. She felt nauseated by the smell and taste of meat in the "Mee Sua" soup served to her at the restaurant. The plaintiff then left his seat and returned with a drink, giving the assurance that the drink was popular with the patrons of that restaurant. After drinking the drink, the defendant felt light-headed. She conveyed her condition to the plaintiff and he agreed to send her back to Sister Nancy's house.

Alleged Duress By The Plaintiff

[30] Upon entering the plaintiff's car, the plaintiff immediately locked the car doors and handed the defendant a piece of printed thermal paper ("the thermal letter"). The defendant was asked to affix her signature on the thermal letter. The defendant read the contents of the thermal letter which, in essence, would authorise the plaintiff to be her irrevocable and only agent to conduct and manage the sale of her lands. Despite disagreeing with the contents of the thermal letter, after making a few amendments to it, the defendant signed the thermal letter.

[31] The defendant contended that the terms in the thermal letter are prejudicial to her, and that no person with the right frame of mind would sign such a letter for the following reasons:

(i) She had mentioned to the plaintiff that she had engaged other agents to procure buyers for her lands. Should she agree to the terms as proposed by the plaintiff in the thermal letter, she would be precluding the other agents whom she had engaged previously to search for potential buyers. At that time, she was facing financial difficulties, and she had intended to sell her lands as soon as possible;

(ii) She disagreed with the plaintiff on the professional fees of 2% of the purchase price because they were too high. Plus she did not believe that the plaintiff would be entitled to 6% Government Service Tax ("GST") imposed in addition to the 2%;

(iii) She disagreed on the payment of earnest deposits as part of the terms and conditions for the sale of the lands;

(iv) The plaintiff proposed that the sale of the lands are to be completed within 12 months from the date of the thermal letter. If the sale could not be effected, a further period of 12 months shall be automatically renewed.

(v) The plaintiff had requested for the professional payments to be paid irrespective of whether the actual sale of the lands took place. To the defendant, this is not an equitable clause.

[32] The defendant amended her name, which was wrongly spelt, in the thermal letter with a pen. She also wrote her identity card number below her name. She further amended or cancelled the terms which she did not agree on as stated in paras. (i) to (v) above, by circling or striking out the terms with a pen.

[33] The defendant was then not feeling well. She was nauseated, feeling light-headed, and in a hurry to go back. The plaintiff had locked the car doors, and told her to sign the thermal letter. The defendant was not sure where to run to since the area near the restaurant was deserted. So the defendant had no choice but sign the thermal letter, after striking out certain clauses which she did not agree to.

[34] After that, the plaintiff sent the defendant back to Sister Nancy's house. Upon arrival, the defendant immediately took a taxi and went home as she was very upset with the events that transpired earlier in the plaintiff's car. She subsequently became afraid of the plaintiff for his actions and thereafter decided not to further communicate with him.

[35] However, the defendant did not lodge a police report. Her reason is that although she was angry and afraid of the plaintiff, she thought it was not so serious, and a police report lodged would affect her respect for Monk Ambanpola.

[36] On 20 July 2011 the plaintiff informed the defendant by telephone that he was on his way to Singapore with his friend, Eric Tan ("Eric") (PW4). He wanted to introduce Eric to the defendant since "Eric knows the underground people he could help" to resolve her litigation suit.

[37] For that reason, the defendant met the plaintiff and Eric at a restaurant in Parit Jawa. They only talked about the litigation suit. The defendant did not mention anything about her lands. After the meeting at the restaurant, the defendant called for her taxi to pick her to send her home. However, the plaintiff insisted that he would send the defendant back to her house. The defendant agreed to it.

[38] When they were at the porch of the defendant's house, Eric requested to use the toilet. It was only for that reason, that the defendant allowed the plaintiff and Eric to enter her house.

[39] Upon entering the defendant's house, the plaintiff immediately informed her that he would not be using the thermal letter. He told the defendant that the contents of the thermal letter should only be kept between them both. Based on that representation, the defendant was of the understanding that the plaintiff would not enforce the terms and conditions as stated in the thermal letter against her.

[40] The plaintiff denied the whole incident about the defendant signing the thermal letter in his car on 17 July 2011. He denied the existence of such a letter. He maintained that the defendant only signed the alleged LOA dated 20 July 2011 at the defendant's house in Muar, Johor.

[41] The defendant alleged that on 4 October 2011, when she asked the plaintiff to give her back all her documents at Sister Nancy's house, the plaintiff gave her some of her documents, but not the thermal letter.

No Satisfactory Proof Of Duress And Existence Of Thermal Letter

[42] This court is unable to attach any weight to the thermal letter. The document was not produced in court for the court's scrutiny. Moreover, the circumstances under which the defendant purportedly signed the thermal letter are highly improbable and hard to believe.

[43] The defendant is a highly educated lady. She was an advocate and solicitor, and holds a LLB Malaya degree and a LLM Harvard degree. She practised as an advocate and solicitor from April 1979 to 1980 in Messrs Chua Brothers & Azzat, and in her own legal firm, Messrs Chua Su Yin & Co. from November 1980 to 2006. It is rather far-fetched that the defendant, if she was indeed light-headed after the drink, could still make intelligent amendments to the terms proposed in the thermal letter. If indeed, the defendant was made to sign the thermal letter under duress by the plaintiff, who had locked her in his car, the defendant would have immediately after that lodged a police report against him. Instead, she still allowed him to send her back to Sister Nancy's house. If such an unusual and

serious incident had indeed taken place, then upon arrival at Sister Nancy's house, she would have told someone, or even the monk about the plaintiff's act of making her sign the thermal letter under duress. But the defendant did not do so. It is more probable that the alleged incident in the plaintiff's car did not occur. Furthermore, the defendant failed to show exactly what are the terms in the thermal letter that were amended by her, and how different are such terms from the alleged LOA dated 20 July 2011. Lastly, if indeed the plaintiff had put the defendant under duress on 17 July 2011, it is highly improbable that the defendant would agree to see the plaintiff again on 20 July 2011 ie, three days later, even if it is for the reason that the plaintiff would be bringing Eric, who had underground connections, to help the defendant resolve her other litigation matter.

[44] In any case, the plaintiff's claim herein is not based on the thermal letter, but on the other three LOA. The defendant's evidence on the thermal letter is unconvincing and not satisfactory, and does not aid her in rebutting the plaintiff's claims regarding the alleged LOA dated 20 July 2011.

Whether The Defendant Signed The Alleged LOA Dated 20 July 2011 (CBOD1 Pt C pp. 58 And 59, Now Exhs. P1A And P1B)

The Subject Property

[45] For ease of understanding, the contents of the various LOA involved, I now reproduce the following Table drawn up by learned counsel for the defendant (pp. 23 and 24 of defendant's submissions):

Changes of Terms	Alleged Letter of Appointment	Letter dated 2.8.2011	Amended Letter dated 2.8.2011
Subject Property	(i) Lot 3433 (ii) Lot 3435 (iii) Lot 3437 (iv) Lot 3438 (v) Lot 3439 (vi) Lot 3440 (vii) Lot 3441 (viii) Lot 3442 (ix) Lot 3443 (x) Lot 3444 (xi) Lot 3445 (xii) Lot 3446	(i) Lot 3432 (ii) Lot 3433 (iii) Lot 3435 (iv) Lot 3436 (v) Lot 3440 (vi) Lot 3441 (vii) Lot 3442 (viii) Lot 3443 (ix) Lot 3445 (x) Lot 3446 (xi) Lot 3447	(i) Lot 3432 (ii) Lot 3433 (iii) Lot 3434 (iv) Lot 3435 (v) Lot 3436 (vi) Lot 3440 (vii) Lot 3441 (viii) Lot 3442 (ix) Lot 3443 (x) Lot 3445 (xi) Lot 3446 (xii) Lot 3447
Nature of Appointment	Exclusive Agent	Only Agent	Only & Sole Agent
Selling Price	RM26.00 p.s.f.	RM36.00 p.s.f.	RM36.00 p.s.f.

Two Different Versions Of Exhs. P1A And P1B, And Both Are Not Signed

[46] The plaintiff contended that the defendant signed the alleged LOA dated 20 July 2011 at her house on the same date when he went there with Eric. The court notes that this letter in CBOD1 Pt C p. 59/ exhs. P1B is not signed by the defendant to appoint the plaintiff as her agent to conduct and manage the sale of her 12 lots of land. In the same page, similarly, the portion for the plaintiff to sign in acceptance of the appointment is not signed by the plaintiff. The original of exhs. P1A and P1B produced by the plaintiff in court is also not signed by the plaintiff and the defendant accordingly. Without proof of the signatures by the plaintiff and the defendant, the court is unable to accept exhs. P1A and P1B as having been duly executed by both parties in order to constitute a legally binding agreement.

[47] The court further notes that exh. P1A in CBOD1 Pt C p. 58 has a vertical line drawn in black handwriting by the left side of the last paragraph. This black line does not appear in the original exh. P1A tendered to the court by the plaintiff. The plaintiff gave the explanation that the black line occurred in the course of photocopying. The court does not find this explanation acceptable. The black line is a drawn line, and not a random scratch line that can happen in the course of photocopying the document. There are now two different versions of exhs. P1A and P1B, namely the version in the CBOD with the black line, and the original produced in court by the plaintiff which is just an ordinary printed letter which can be easily produced by anyone. Notwithstanding that, the common fact about these two versions is that the document does not have the signatures of the plaintiff and the defendant. The court is of the view that it is highly improbable that the plaintiff and the defendant had in fact signed and executed this alleged LOA dated 20 July 2011.

The Document Torn By The Defendant On 4 October 2011

[48] The plaintiff contended that the original LOA dated 20 July 2011 was signed by both parties, but that was torn by the defendant on 4 October 2011 at Sister Nancy's house. However, there is no cogent evidence to confirm that the document torn by the defendant is the same alleged LOA dated 20 July 2011 that was duly executed by both parties.

[49] The defendant maintained that she has no knowledge of the unsigned alleged LOA dated 20 July 2011. She was only made aware of it during the discovery stage of these court proceedings. She had never requested the plaintiff to return to her the original of the alleged LOA dated 20 July 2011 at Sister Nancy's house on 4 October 2011. At all times, she was asking for the return of the original thermal letter from the plaintiff. The original alleged LOA dated 20 July 2011 was not in the stack of documents returned to her at Sister Nancy's house. A few days after the incident on 4 October 2011, the defendant on 9 October 2011, lodged a police report (CBOD6 Pt B p. 2) to protect her interest.

[50] The defendant, under cross-examination, stated that the letter she tore on 4 October 2011 is a letter similar to her "letter that was sent to UEM offering for sale", and that the alleged letter that was torn up was pieced together, and is now with the police. The court does not give any weight to this evidence. The defendant had never produced the UEM letter or a copy of it in court, including the alleged torn letter which is now with the police.

[51] The court is presented with conflicting evidence on what is the exact letter that was torn by the defendant on 4 October 2011. The plaintiff contended that it was the signed alleged LOA dated 20 July 2011. The defendant contended that it was a letter similar to the UEM letter. This was not pleaded by the defendant. In the light of such conflicting evidence, and given the above evaluation by the court regarding the Alleged original LOA dated 20 July 2011, the court is unable to arrive at a finding on what exactly was the letter that was torn by the defendant on 4 October 2011.

Not Probable That The Document That The Defendant Wrote On At Her House Is The Alleged LOA Dated 20 July 2011

[52] The plaintiff alleged that the defendant signed the original alleged LOA dated 20 July 2011 at the plaintiff's house in Muar, and Eric was there when she signed it.

[53] The CCTV recording of the defendant's house on 20 July 2011 (exh. D9B), *inter alia*, shows the defendant, at the material time, carrying a file. She took out several documents and showed them to the plaintiff. The defendant was standing by the dining table and then bent down towards the documents for about one minute. The defendant then talked to the plaintiff. The plaintiff arranged the stack of documents that he took back from the defendant. The plaintiff and Eric then left the defendant's house.

[54] The defendant stated that she was bending down to write on a piece of paper the full names of Deo Chang Long and Deo Lee Chen *ie*, the plaintiffs in another litigation matter involving the defendant, and also their known addresses to allow the plaintiff and Eric to contact them with a view to negotiating a possible out of court settlement. However, the defendant was clear in her evidence that at no time did she sign the alleged LOA on 20 July 2011.

[55] Eric testified that he saw the plaintiff taking out and showing the alleged LOA dated 20 July 2011 to the defendant. The plaintiff and the defendant discussed the LOA for a short while before he saw the defendant bending down to fill in her details in the LOA. Eric heard the defendant telling the plaintiff that her name was misspelled and that the correct spelling should be "Chua Su Yin" and not "Chua Soo Yin". After that, the three of them had a short discussion on the subject property. The plaintiff and Eric then left the defendant's house. In the car, Eric requested the plaintiff to show him the alleged LOA dated 20 July 2011. Eric noticed that the LOA was filled and duly signed by the defendant.

[56] The court finds that the four litigation lots are stated in the alleged LOA dated 20 July 2011. As submitted by learned counsel for the defendant, it is highly improbable that the defendant would sign off on such a letter authorising the plaintiff to sell the very same four lots which are the subject of the litigation, with caveats registered against the titles and could not be easily sold, if sold at all. Even Eric, upon cross-examination, agreed that if the four lots are the subject of litigation, the defendant would not have signed the LOA to authorise the plaintiff to sell the four litigation lots. Thus, Eric's above evidence in para. 55 above is not credible and cannot be accepted by this court.

[57] The court is of the opinion that if indeed the defendant had signed the original alleged LOA dated 20 July 2011 at her house as alleged by the plaintiff and Eric (which the court is doubtful of), then the CCTV recording would show the plaintiff also signing the same document after the defendant had signed it. However, this is not shown in the CCTV recording. Instead, the CCTV recording shows the plaintiff taking the document after the defendant had signed it, and then leaving the defendant's house with Eric. It is therefore highly improbable that both the plaintiff and the defendant had executed the alleged original LOA on 20 July 2011.

[58] The defendant contended that she did sign a letter on 20 July 2011 to enable the plaintiff to get a contractor to put up a signboard at the site of her lands, but not the alleged LOA dated 20 July 2011.

[59] The plaintiff stated that he was provided with a copy of the Certificates of Title to the 12 lots of lands after his appointment on 20 July 2011. However, according to the defendant, the documents of title that the plaintiff claimed to have do not record the defendant as the registered proprietor, but the defendant's mother instead. The court is left with the question as to how the plaintiff was able to give the title numbers to the lots in the alleged LOA as early as 20 July 2011. It is therefore highly improbable that the defendant did execute the LOA dated 20 July 2011, as alleged by the plaintiff.

Inconclusive Evidence Of PW5

[60] The plaintiff further relied on the evidence of his witness, Sarath Naganan Jayatileka (PW5), a Buddhist friend, who testified that on 26 September 2011, when he was at Sister Nancy's house to meet the monk, the plaintiff and the defendant were also there. Suddenly, the defendant got agitated and started raising her voice demanding that the plaintiff hands over the alleged LOA to her. A few of them who were present tried to calm her down, telling her not to raise a commotion in this religious setting, but she would not listen. They then told the plaintiff that he had better give her the letter to calm her down, which the plaintiff did. When asked if the letter which the plaintiff gave to the defendant is the one in CBOD1 Pt C pp. 58 and 59/exhs. P1A and P1B ie, the alleged LOA dated 20 July 2011, PW5 stated "But this is not signed. The one I am referring to is the signed copy".

[61] PW5 further testified that after the plaintiff had handed over the letter to her, the defendant claimed that it was a photocopy and did not contain her original signature. She started getting agitated again, so a few of them present there then offered to help her to look at the letter.

[62] PW5 then took the letter to inspect it. He was convinced that the signature on it was original, and not a photocopy. After that, the defendant settled down and took back the alleged LOA. Suddenly, she tore the letter.

[63] PW5's evidence has to be treated cautiously. He stated that the tearing of the alleged LOA dated 20 July 2011 was on 26 September 2011, but the evidence of the plaintiff and the defendant clearly confirm that the tearing incident was on 4 October 2011. PW5 saw a signed version of exhs. P1A and P1B (CBOD1 Pt C pp. 58 and 59). He only saw the defendant's signature on the document, but he did not testify that he saw the plaintiff's signature. Moreover, he did not testify on the lot numbers of the lands stated in the purported LOA. The court is left with serious doubt as to which document or version of the LOA that PW5 actually saw. Therefore, PW5's evidence is inconclusive and cannot support the plaintiff's case that the defendant tore up the original alleged LOA dated 20 July 2011.

SMS Messages Which Show The Probability That The Document Written Signed By The Defendant At Her House Is Not The Alleged LOA Dated 20 July 2011

[64] The plaintiff relied on the SMS message of the defendant to the plaintiff dated 20 July 2011 at 2109 hours, "James can u give me a photocopy of the letter i signed today. Many thks for helping n please convey my thks to Eric". (CBOD5 Pt B p. 1, exh. P2A).

[65] The above texted message shows that by the defendant's own evidence, she did sign a letter on 20 July 2011. However, the message does not state what is that letter that the defendant had signed. Moreover, the plaintiff had not given a photocopy of that letter yet to the defendant. The defendant thanked the plaintiff and Eric for helping. It is not stated what is the matter that the plaintiff and Eric had helped the defendant in. The defendant, in her testimony, stated that it was on the basis that Eric could help her regarding her litigation suit that she met the plaintiff and Eric at the Parit Jawa restaurant. The plaintiff and Eric went into her house because Eric wanted to use the toilet. She stated that she wrote the two names of the plaintiffs in her litigation suit, namely, Deo Cheng Long and Deo Lee Cheng. She did not sign the alleged LOA dated 20 July 2011.

[66] The court notes that in the defendant's next SMS message to the plaintiff on 23 July 2011 ie, three days after 20 July 2011, the defendant texted, "Deo chang long sd in caveat lodged in 2007 stated P price as RM478,000" (CBOD5 Pt B p. 1, exh. P2B). It is therefore more probable, as what the defendant had stated, that on 20 July 2011 she was merely writing on a piece of paper in her house the names of Deo Chang Long and Deo Lee Cheng in her litigation suit, and not signing or executing the alleged LOA dated 20 July 2011.

Plaintiff Failed To Prove His Exclusive Appointment Under The Alleged LOA Dated 20 July 2011

[67] In the absence of a duplicate copy of the signed alleged LOA dated 20 July 2011, or even secondary evidence of it as permitted under s. 63 of the Evidence Act 1950, such as a certified copy, copies made from the original by mechanical processes or copies made from or compared with the original, this court holds that the plaintiff has failed to discharge his burden of proving that he was duly appointed to be the exclusive agent for the defendant under the original alleged LOA dated 20 July 2011.

Whether The Defendant Signed The Two LOA Dated 2 August 2011 (CBOD1 Pt A pp. 1 And 2)

The Two LOA Dated 2 August 2011 Are Probably Not For Putting Up The Signboard But Are Regarding The Plaintiff's Appointment

[68] The plaintiff contended that the alleged LOA dated 20 July 2011 was followed up later by the two LOA dated 2 August 2011 which state that the plaintiff was appointed as the defendant's "ONLY and SOLE AGENT" to "conduct and manage all matters concerning the sale of the abovementioned pieces of properties in 12 individual lots of approximately 5 acres per individual lot." (CBOD1 Pt A p. 2).

[69] The court accepts the submission of learned counsel for the plaintiff that the authenticity and contents of this letter are admitted by virtue of it being a "Part A" document (see O. 34 r. 2(2)(d) of the Rules of Court 2012 on agreed documents).

[70] The defendant admitted signing these two LOA dated 2 August 2011. These two LOA are addressed to the attention of "To WHOM IT MAY CONCERN". The defendant contended that she signed these two letters to enable the plaintiff to get a contractor to put up a signboard at the site of her lands, but these two letters are not the LOA of the defendant to appoint the plaintiff to sell her lands.

[71] The court agrees with the submission of learned counsel for the plaintiff that according to the defendant's version, a letter to enable the defendant to get a contractor to put up the signboard was already executed on 20 July 2011 and given to the plaintiff (see also para. 58 above). It is improbable that the defendant would again execute two more letters, *ie*, the two LOA dated 2 August 2011, for the same purpose of enabling the plaintiff to get a contractor to put up a signboard on the property. It is more probable that the two LOA dated 2 August 2011 are not for signboard purposes.

[72] The next question that arises is whether the two LOA dated 2 August 2011, by their form and substance, constitute a legally binding contract.

By Their Form And Substance, The Two LOA Dated 2 August 2011 Do Not Amount To A Contract

[73] Looking at the form of the two LOA dated 2 August 2011 ie, by their format of being addressed for the attention of "To WHOM IT MAY CONCERN", the court does not think that these two LOA can amount to a formal and contractually binding LOA. The two LOA dated 2 August 2011 are akin to a notice to whoever it concerns that the plaintiff was appointed by the defendant as her only and sole agent. They are not a formal and proper contract that was drawn up, and signed and executed by both parties. There is no signature of the plaintiff proving that he duly executed such agreement. The elements required for the formation of a contract, namely, offer, acceptance, consideration and intention to create legal relations, have not been proved by the plaintiff to the satisfaction of the court in respect of the two LOA dated 2 August 2011 (see *Cheshire, Fifoot & Furmston's Law of Contract* 13th edn., Chapter 13 pp. 28-48 on The Phenomena of Agreement, and Contracts Act 1950).

Whether The Plaintiff And Defendant Agreed To Oral Terms Which Form Part Of A Legally Binding Agreement Between Them

[74] The terms of the oral part of the agreement are pleaded in para. 8 of the SOC where the plaintiff alleged that he would:

(a) Deal with situations concerning various unauthorised agents claiming to have the purported authorisation to sell the subject property;

(b) In any event, verify whether such unauthorised agents have in fact genuine potential buyers;

(c) Assess the financial means of any genuine potential buyers to complete the sale;

(d) Liaise and discuss with real estate agents known to the plaintiff for the sale of the subject property; and

(e) Prepare and carry out the Sale and Purchase Agreement if a purchaser of the Subject Land is found by the real estate agents introduced by the plaintiff to the defendant.

[75] Given the earlier findings of the court that there is no legally binding written agreement being proved by the plaintiff to have been executed by both parties, the alleged oral terms above are too general and by themselves cannot stand alone to constitute a contract.

[76] The plaintiff pleaded that the oral part of the agreement was made at his house on or about 13 July 2011. The defendant stated that she went to the plaintiff's house then to use the plaintiff's internet. There was no more than a discussion and there never was an agreement on anything during this visit.

[77] The plaintiff, under cross-examination, then alleged that the oral terms were agreed on 17 July 2011. However, it must be noted here that the 17 July 2011 was the day that the defendant purportedly had signed the thermal letter under duress by the plaintiff. It is highly improbable that under those peculiar circumstances that the defendant would agree to any oral terms which would amount to a valid and binding contract, if at all she was put under such duress after the plaintiff had allegedly locked all the car doors.

[78] On the whole, the court finds that there is no concrete or satisfactory evidence of any oral terms agreed upon by the plaintiff and the defendant which can form the substance and basis of a legally binding and enforceable contract.

Regarding Issues (4), (5) And (6)

No Legally Binding Contract Proven So Plaintiff Is Not Liable

[79] In the light of the court's above findings that there is no legally binding contract proven by the plaintiff based on the alleged LOA dated 20 July 2011, the two LOA dated 2 August 2011, and oral terms of a contract, the question of a breach or non-performance of a contract by the defendant, and the damages that follow does not even arise at all in the first place. Based on these findings alone, the plaintiff's claim ought to be dismissed.

Whether The Plaintiff Is The Effective Cause Of The Sale And Whether He Is Entitled To The Reliefs

[80] However, if it were to be held later that I had erred in the above findings, for completeness, I now proceed to consider the possible reliefs that the plaintiff may be entitled to.

[81] It must be stressed here that the plaintiff can only claim the reliefs sought if he is able to prove that he was the effective cause of the successful transaction when Aliran Peluang finally purchased part of the 16 lots from the defendant.

[82] The plaintiff alleged that he had done the following work for the defendant (see defendant's written submissions p. 33):

No.	Date	Work Done
1.	Between 17.7.2011 and 20.7.2011	Had approached Choy Meng Hin and informed him of the defendant's lands. Requested Choy Meng Hin to approach prospective buyers pertaining to this lands, including the Dijaya Group.
2.	About 20.7.2011	Went to Johor Bahru to purchase the certified plan and the surveyor plan for the defendant's lands.
3.	21.7.2011	Visited the defendant's lands and took photographs of the same.

4.	2.8.2011	Met with Dato' Tong Kien Onn, the Managing Director of the Dijaya Group, to discuss the sale of the defendant's lands.
5.	After 2.8.2011	Erected a signboard on defendant's lands stating "This Land Is Not For Sale"
6.	6.8.2011	Conducted survey and inspected the defendant's lands.
7.	11.8.2011	Visited the defendant's lands with several employees of the Dijaya Group.

[83] The plaintiff alleged that the offer price for the subject property was RM28 psf but it went up when Dijaya offered RM33 psf.

The Price Was Never Agreed Upon

[84] Dato' Tong gave evidence that Choy had suggested RM36 psf, but he offered only RM28 psf, and then Choy came back with RM32 to RM33 psf. That was the end of their negotiations over price. As at October 2011, the price had not been agreed upon and no sale was concluded with the registered owner. Dato' Tong stated that Tan Sri Danny Tan, Dijaya's Group CEO, had not given his approval yet to Dijaya to purchase the subject property at that point in time.

[85] Choy, under cross-examination, admitted that as at October 2011, no sale was concluded between Dijaya and the defendant. The purported sale to Dijaya could not go through since the defendant could not be contacted by the plaintiff and him to agree to the price offered by Dato' Tong.

[86] The defendant testified that she was not informed by the plaintiff and Choy of Dijaya's offer to purchase her lands RM28 psf or RM33 psf. She never knew of such an offer made by Dato' Tong.

[87] It is clear from the evidence that the negotiations by the plaintiff and Choy with Dato' Tong were aborted after the defendant terminated the plaintiff's agency in October 2011.

The Defendant Sold Her Lands To Another Purchaser Where The Plaintiff Played No Role

[88] According to the defendant's evidence, the negotiations that led to the sale of her lands to Aliran Peluang started by way of a request by the defendant to her neighbour, Heng Guek Hue (DW1), in early 2012. After the introduction of Dijaya to the defendant by DW1 and Lee Meng Fui (DW3), an estate agent, the defendant dealt directly with Tan Sri Danny Tan, Dijaya's Group CEO at that time, and Low Yung Hui (DW2), the Deputy General Manager Business Development of Dijaya, who had not been involved in the 2011 negotiations. Dato' Tong was not involved in the negotiations in 2012.

[89] DW1 and DW3 arranged a meeting in Hyatt hotel in Singapore on 29 May 2012 where the defendant met a representative of Dijaya, namely DW2.

[90] According to DW2, a subsequent second meeting was held on 8 June 2012 at Hyatt Hotel, Singapore. DW2 stated that the meeting was organised by Tan Sri Danny Tan himself. Dijaya was represented by Tan Sri Danny Tan and DW2. The defendant appeared personally with her appointed solicitor, Mr David Tay, from Messrs Tay & Partner. She was accompanied by DW1 and DW3. Tan Sri Danny Tan negotiated directly with the defendant. They initially discussed the possibility of Dijaya purchasing the whole of 16 lots of the defendant's lands, but finally decided on 11 lots. It was further agreed that the purchase was for Aliran Peluang, a company owned by Tan Sri Danny Tan and his brother, Tan Sri Vincent Tan, who were then the registered shareholders and Directors, as the purchaser.

[91] Eventually, Aliran Peluang purchased the defendant's lands at RM43.80 psf, eight months after the plaintiff's agency was terminated on 4 October 2011 by the defendant.

[92] The plaintiff and Choy played no role in the final sale of the defendant's lands to Aliran Peluang. The sale price at RM43.80 psf was far higher than the RM33 psf that Choy had offered to Dato' Tong. There is no link between the plaintiff and Choy and the sale to Aliran Peluang of the defendant's lands. In his cross-examination, the plaintiff admitted that Choy had never mentioned Aliran Peluang to him, about it being a purchaser. The plaintiff further admitted that Aliran Peluang and Dijaya are two different legal entities.

The Defendant's Sale Of Her Lands Involved Different Lots From The Subject Property

[93] Low Yung Hui (DW2) confirmed that Aliran Peluang only purchased 11 lots out of the defendant's 16 lots of land. DW2 confirmed that the following 11 lots with individual titles were purchased collectively as one property in one sale and purchase agreement by Aliran Peluang from the defendant:

> GRN 12356 (formerly CT 9694) Lot 3432, GRN 281066 (formerly CT9695) Lot 3433, GRN 365946 (formerly CT 9696) Lot 3434, GRN 281071 (formerly CT 9697) Lot 3435, GRN 95752 (formerly CT 9702) Lot 3440, GRN 95755 (formerly CT 9703) Lot 3441, GRN 95761 (formerly CT 9704) Lot 3442, GRN 95765 (formerly CT 9705) Lot 3443, PN 15773 (formerly CT 9707) Lot 3445, PN 15774 (formerly CT 9708) Lot 3446, GRN 95775 (formerly CT 9709) Lot 3447 all in the Mukim of Pulai, Daerah Johor Bahru, Negeri Johor. (see DW2-WS Q & A.18).

[94] The sale and purchase agreement dated 22 June 2011 between Aliran Peluang and the defendant (CBOD2 Pt B pp. 49-68) was executed at the office of Messrs Lee & Lee, Advocates & Solicitors in Singapore. PW2 confirmed

that the 11 lots purchased by Aliran Peluang are different from the subject property as stated in the alleged LOA dated 20 July 2011 where the selling price was RM26 psf (see also DW2-WS Q.57 - Q.69 and As.).

[95] The alleged LOA dated 20 July 2011 was in respect of 12 lots at a selling price of RM26 psf. The amended second LOA dated 2 August 2011 was in respect of 12 lots at a selling price of RM36 psf. The court finds that lots 3437, 3438, 3439, 3441 and 3444 in the alleged LOA dated 20 July 2011 are not part of the 11 lots sold to Aliran Peluang. Furthermore, lot 3436 in the amended LOA dated 2 August 2011 is not part of the 11 lots sold to Aliran Peluang. It is clear that the sale to Aliran Peluang of the defendant's 11 lots of land is different from the set of lots which is the subject matter of the plaintiff's alleged LOA dated 20 July 2011 and the second LOA dated 2 August 2011.

[96] It is clear from the above findings that the eventual sale of the defendant's lands to Aliran Peluang involved a different set of lots from the subject property. The purchaser, Aliran Peluang, is a different legal entity from Dijaya. Since the plaintiff and Choy played no role in the sale of the defendant's 11 lots of land to Aliran Peluang, the plaintiff was not the effective cause of such sale. Therefore, the plaintiff is not entitled to the sums claimed.

Plaintiff's Claim For Remuneration In View Of Exclusive Appointment

[97] The plaintiff further contended that in view of the terms of the alleged LOA dated 20 July 2011 and the second LOA dated 2 August 2014, the plaintiff had been given an exclusive appointment in that he was to be the defendant's only and sole agent for 12 months from the date of the alleged LOA dated 20 July 2011. The eventual sale of the defendant's lands to Aliran Peluang in June 2012 was within the period of 12 months of the plaintiff's exclusive appointment. Therefore, even if the plaintiff was not involved in the sale to Aliran Peluang, the plaintiff is entitled to damages due to the defendant's breach of her agreement with the plaintiff within the 12 months.

[98] Learned counsel for the plaintiff cited for the court's consideration s. 158 of the Contracts Act 1950 which provides as follows:

> Compensation for revocation by principal or renunciation by agent
>
> 158. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

[99] Since the court has found that the alleged LOA dated 20 July 2011 has not been proved to exist by the plaintiff, s. 158 of the Contracts Act 1950 is therefore not applicable. However, for completeness, the court would consider here the next questions ie, whether the plaintiff's alleged exclusive

appointment for 12 months can be terminated by the defendant, and if such appointment was terminated, would the plaintiff be entitled to any payment, and/or damages for loss of opportunity to complete his appointment.

Claim For Quantum Meruit Not Pleaded

[100] The plaintiff relied on the case of *Prickett v. Badger* [1856] 1 CBNS 296 for a claim for *quantum meruit*.

[101] In the leading case of *Luxor (Eastbourne) Limited (In Liquidation) And Others v. Cooper* [1941] AC 108, at p. 65 Lord Romer summarised *Prickett*'s case as follows:

> It only remains to say a few words about *Prickett v. Badger* ... In that case, the defendant had employed the plaintiff to find a purchaser for some land. The plaintiff thereupon prepared a plan of the land, issued advertisements, and wrote letters, and had personal interviews with a number of people. Eventually he found a person who was ready, willing and able to buy the land. The defendant then disclosed for the first time the fact that he had no title to the land. Pollock CB, directed the jury in those circumstances, the plaintiff was entitled to be paid by the defendant a reasonable remuneration for his services – in other words, a *quantum meruit*. On appeal, it was held that the direction was right. Crowden J said that a contract was implied by law to pay the plaintiff a reasonable remuneration for his labour ...

[102] The court agrees with the submission of learned counsel for the defendant that *Prickett*'s case (*supra*) is not the authority for a commission contract, but a claim for *quantum meruit*. In the instant case, the plaintiff did not plead any claim for *quantum meruit*. The plaintiff is claiming for the whole sum due to him under the commission contract, and/or for damages for the loss of opportunity to complete his appointment (see paras. 20 and 21 of the SOC).

[103] Section 158 of the Contracts Act 1950 is only applicable if the plaintiff can prove an express or implied term of the agreement that the agreement should be continued for a period of time, in this case, 12 months. It is to be noted at this juncture that the plaintiff did not plead premature termination by the defendant, without sufficient cause, of the purported agency agreement. The plaintiff merely pleaded on unlawful termination of the agreement by the defendant for breach of her implied duty and refusal to cooperate and/or communicate with the plaintiff to enable the sale of the subject property to take place.

No Implied Term In The LOA That The Defendant Cannot Sell Her Lands

[104] Regarding implied terms of a contract, in *Luxor* (*supra*), the House of Lords held that "there can be no implied term that the vendor will not refuse to go on with a proposed sale so long as matters are still in negotiation and no binding contract has been made between the vendor and the purchase". It was held that there was therefore no breach by the appellant companies and they were not liable to the respondent in damages.

[105] Lord Russell in *Luxor* (*supra*), regarding commission contracts, *inter alia* held:

> No obligation is imposed on the agent to do anything. The contracts are merely promises binding on the principal to pay a sum of money upon the happening of a specified event, which involves the rendering of some service by the agent ... If according to the true construction of the contract, the event has happened upon the happening of which the agent has acquired a vested right to commission ... then no act or commission by the principal or anyone else can deprive the agent of that right; but until that event has happened that agent cannot complain if the principal refuses to proceed with, or carry to completion, the transaction with the agent's clients.

[106] Further, Lord Wright in *Luxor* (*supra*), *inter alia*, stated:

> His claim to commission when the sale is not completed ... I cannot think that a property owner can be held, in virtue of a commission contract like this, to have bound himself by mere implication to complete the sale or to pay damages to the agent.

[107] According to Lord Wright:

> In the case of the commission agent, to whom payment is dependent on completion or the like condition, the principal does not promise that he will complete the contract ... His only promise is that he will pay commission if the contract is completed. There is no promise to pay a reasonable remuneration if the principal revokes the authority to the agent. And it is a further objection to a claim on *quantum meruit* that the employer has not obtained any benefit. The agent has earned nothing until the event materializes. It may seem hard that an agent who has introduced a potential buyer, able and willing to complete, should get nothing for what he has done, if during the negotiations, the principal decides not to complete, according to his pleasure and without any reason which quoad the agent is a sufficient cause ... The agent in practice takes what is a business risk.

[108] The House of Lords in *Luxor* (*supra*) further noted the judgment of William J in *Prickett* (*supra*) and held as follows:

> The implied understanding that the agent is only to receive a commission if he succeeds in effecting the sale, but, if not **then he is to get nothing**. (emphasis added).

No Express Or Implied Term Of A 12 Months' Prohibition On The Defendant To Sell Her Lands

[109] Applying the principles in *Luxor* (*supra*) to the instant case, even if this court were to hold that there was in fact an exclusive appointment of the plaintiff by the defendant to be her only and sole agent for 12 months from 20 July 2011 (which this court does not), this court is of the view that there is no provision in the alleged agreement that prohibits the defendant from terminating such appointment of the plaintiff. The alleged LOA dated

20 July 2011, which contains the express term of 12 months for the plaintiff's appointment, had in fact been varied, and discharged or superseded by the second LOA dated 2 August 2011 which do not stipulate the appointment for 12 months. There is therefore no longer any express term, and also no implied term imposed on the defendant to wait for the 12 months to be over before she could, on her own initiative, and with the assistance of her friend and other estate agent, to sell her lands to another purchaser in a different transaction where the plaintiff had no role to play. The plaintiff's appointment was terminable at any time. The plaintiff's own evidence shows that when the defendant tore the letter on 4 October 2011, she also said that the lands were not for sale. The defendant's act and declaration had effectively terminated whatever agency or commission contract that existed between both parties. Thereafter, the plaintiff did nothing to obtain a sale of any of the defendant's lands. Whatever work that the plaintiff had done initially for the defendant, for example enlisting Choy's assistance to approach Dato' Tong, making site visits, and ensuring that a signboard was put up at the site of the defendant's lands, did not lead to a successful conclusion of the sale of the subject property, ie, the same set of 12 lots only, to Dijaya. As submitted by learned counsel for the defendant, the plaintiff's attempts before October 2011 to sell the defendant's lands did not cause the sale of the 11 lots of the defendant's lands to Aliran Peluang in June 2012. The plaintiff took a business risk in doing any preliminary work for the defendant. Unfortunately for him, when the defendant terminated his agency on 4 October 2011, the plaintiff could no longer carry out his full obligations as the defendant's agent under the alleged agreement. Therefore, the plaintiff is unable to rely on s. 158 of the Contracts Act 1950 for his claim. It follows that he has no right to claim the remuneration and professional fees sought, whether in full or on a proportionate basis according to work done.

[110] The Federal Court in *Tang Chiok Sing v. Lian Fatt Sawmill Co* [1976] 1 LNS 155; [1976] 2 MLJ 241 applied the principle in *Luxor* (*supra*). However, in upholding the damages assessed in favour of the agent, it further stated:

> Once the appellant had brought the parties together he was entitled to his commission ... the respondents were taking advantage of a device to try to evade payment of commission. Such a device should not be allowed to defeat the claim of an innocent party. Under the circumstances it would be inequitable for the partnership to refuse to pay commission.

[111] The decision *Tang Chiok Sing* (*supra*) has to be distinguished here. In the instant case, the plaintiff, as agent, did not succeed in bringing the defendant together with Dato' Tong/Dijaya. The plaintiff blamed it on the fact that after 4 October 2011, the defendant refused to be contacted and remained incommunicado. The fact is that the plaintiff, without being able to contact the defendant, did not succeed in selling the defendant's lands to Dijaya. He is therefore not entitled to any commission.

Regarding Issue (7)

[112] The plaintiff is an advocate and solicitor. At all material times he was not a registered agent under the Valuers, Appraisers and Estate Agents Act 1981 ("VAEA").

[113] According to the alleged LOA dated 20 July 2011, the terms were that:

(i) The plaintiff was appointed as the defendant's agent to conduct and manage the sale of the subject property; and

(ii) The plaintiff was to be remunerated by the defendant with a professional fee of 2% of the purchase price plus 6% GST upon execution of the Sale & Purchase Agreement.

[114] The plaintiff's duties under the alleged LOA dated 20 July 2011 were therefore to be the defendant's agent to search for an interested buyer and introduce him to the defendant (SOC para. 5).

Breach Of The VAEA Provisions

[115] The question is whether the plaintiff's duties fall within the definition of "real estate practice" under the VAEA.

[116] Section 2 of the VAEA has defined "estate agency practice" to mean:

> acting or holding oneself out to the public or to any individual or firm as ready to act, for a commission, fee, reward or other consideration, as an agent in respect of the sale or other disposal of land and buildings and of any interest therein or the purchase or other acquisition of land and buildings and of any interest therein or in respect of the leasing or letting of land and buildings and of any interest therein *including the act of making known of the availability of land, building or any interest therein for such sale or other disposal, purchase or other acquisition, leasing or letting.* (emphasis added).

[117] The underlined words above were introduced by an Amendment Act in PU(A) A1404 which came into force on 5 February 2011.

[118] Applying the above definition of "real estate practice" to the instant case, from the evidence, it is clear that the plaintiff was:

(i) acting or holding out to the defendant as ready to act;

(ii) for a commission and/or fee as an agent;

(iii) in respect of land;

(iv) including, making known the availability of land for sale.

[119] The plaintiff alleged that he had done work for the defendant in respect of the subject property as stated earlier. By his own admission, the plaintiff was therefore acting for the defendant for the sale of her lands. The alleged LOA dated 20 July 2011 clearly provided for commission and/or fee for his professional service ie, in the form of a professional fee of 2% of the purchase price plus 6% GST.

[120] The plaintiff also "made known of the availability" of the defendant's lands to various parties, including Dijaya. Clearly, the plaintiff was not merely acting as an introducer or a negotiator, as he had alleged.

[121] The acts carried out by the plaintiff show that he had undertaken the work of an estate agent within the meaning of "estate agency practice" under s. 2 of the VAEA. The alleged LOA was purportedly entered into on 20 July 2011, before the amendments were introduced by PU(A) A1404. However, the plaintiff's performance of his job as an estate agent was after the date of coming into force of the above amendments. Therefore, the work purportedly done by the plaintiff for which he claims commission and/or a fee in the form of a professional fee falls within the ambit of the amended definition of "estate agency practice".

[122] Sections 22C(i)(c) and (d) of the VAEA provide as follows:

> Restrictions on estate agency practice
>
> 22C (1) No person shall unless he is a registered estate agent and has been issued with an authority to practise under section 16:
>
> …
>
> (c) undertake any of the work specified in s. 22B; or
>
> (d) be entitled to recover in any court any fees, commissions charges, or remuneration for any professional advice or services rendered as an estate agent.

[123] Section 22B(1) provides as follows:

> Estate agency practice
>
> 22(B)(1) Subject to the provisions of this Act, a registered estate agent who has been issued with an authority to practise by the Board shall be entitled to practise his profession and shall be authorised to undertake estate agency practice.

[124] It is clear from s. 22C(1)(d) that the plaintiff is barred from recovering any remuneration for any professional advice or services rendered as an estate agent since he is not a registered estate agent under s. 22B(1) of the VAEA who has been issued with authority by the Board to practise his profession and authorised to undertake estate agency practise.

[125] From the evidence adduced, it is also clear that the plaintiff did not act as an advocate and solicitor for the defendant. The sale and purchase agreement for the sale of the defendant's lands to Aliran Peluang was not prepared by the plaintiff. According to the defendant, she executed the sale and purchase agreement for the sale of her lands to Aliran Peluang at the office of Messrs Lee & Lee, Advocates & Solicitors, Singapore.

[126] The plaintiff was acting as an estate agent in contravention of the provisions of the VAEA. It is the intention of Parliament that no relief shall be granted to any person who carries on as an unregistered and illegal estate

A agent practice. The plaintiff is not entitled to seek relief for the professional fee of the 2% of the purchase price which in fact is a commission and/or fee within the meaning of the definition of "estate agency practice" in s. 2 of the VAEA for services rendered as an estate agent.

Breach Of The Service Tax Regulations 1975

B

[127] The next question is whether the plaintiff is entitled to the 6% of GST. The plaintiff admitted under cross-examination that this 6% GST is a service tax.

[128] Under item 11 of Schedule 2 to the Service Tax Regulations 1975, the C following persons are entitled to charge service tax:

> Any person who is, a Licensed or Registered Surveyors including Registered Valuers, Appraisers or Estate Agents licensed or registered under the relevant laws for the time being in force having a total annual sales turnover, whether combined or singly, of more than RM150,000 of any one or more taxable services mentioned within this Group.

D

[129] Taxable Services have been defined under Schedule 2 to the same Regulations as:

> Provision of all types of surveying services including valuation, appraisal, **estate agency or professional consultancy services excluding provision of such services** supplied in connection with goods or land situated outside Malaysia. (emphasis added)

E

[130] From the plaintiff's own evidence, his role was limited to his involvement as an agent to manage the sale of the defendant's lands. It appears to the court that the only explanation for the plaintiff charging the F plaintiff GST is that he was providing the service of an estate agency.

[131] Section 30 of the VAEA provides as follows:

> Any person who -
>
> ...
>
> G
>
> (h) not being a person acting under the immediate personal direction and supervision of a registered valuer, appraiser or estate agent carries out or undertakes to carry out any work provided under section 19 or 22B; or
>
> (i) acts in contravention of section 21 or section 22C,
>
> H
>
> commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand ringgit or to imprisonment for a term not exceeding three years or to both and he shall be liable to a further penalty of five hundred ringgit for each day during the continuance of such offence.

I **[132]** The plaintiff never acted under the immediate personal direction and supervision of a registered estate agent. Instead, as he had pleaded in para. 13.1 of the SOC, he in fact was "supervising" City Real Properties ie,

Choy's estate agency (and therefore Choy). The plaintiff was the one who brought Choy into the picture, and used Choy's contact with Dato' Tong an attempt to sell the defendant's lands to Dijaya. If the sale had gone through, the plaintiff would have been liable for the provision of the service of an estate agency as an unregistered estate agent, and charging the defendant a commission and/or fee, namely a professional fee, including the 6% GST illegally. He can be liable to prosecution for an offence under s. 30 of the VAEA.

Illegality Of The Contract

[133] In *Asia Television Ltd & Anor v. Viwa Video Sdn Bhd & Other Cases* [1984] 2 CLJ 80; [1984] 1 CLJ (Rep) 72; [1984] 2 MLJ 304 Abdoolcader FC approved a passage in *Curragh Investment Ltd v. Cook* [1974] 1 WLR 1559 which states as follows:

> I accept of course, that where a contract is made in contravention of some statutory provision then, in addition to any criminal sanctions, the courts may in some cases find that the contract itself is stricken with illegality. But for this to occur there must be a sufficient *nexus* between the statutory requirement and the contract.

[134] Under s. 24 of the Contracts Act 1950, the consideration or object of an agreement is lawful unless:

> (a) it is forbidden by a law;
>
> ...
>
> (c) it is fraudulent.

[135] In this case, the consideration of professional fee of 2% of the purchase price plus 6% GST is forbidden by the VAEA, and it is fraudulent since the plaintiff is not a registered estate agent under the VAEA. The court takes judicial notice of such illegality even though it is not pleaded (see *Theresa Chong v. Kin Khoon & Co* [1976] 1 LNS 165; [1976] 2 MLJ 253) and the Supreme Court case of *Lim Kar Bee v. Duofortis Properties (M) Sdn Bhd* [1992] 3 CLJ 1667; [1992] 1 CLJ (Rep) 173).

[136] Learned counsel for the plaintiff submitted that the plaintiff's claim is not barred by the VAEA and is not unlawful for the purposes of s. 24 of the Contracts Act 1950. He submitted that the plaintiff did not announce his exclusive appointment to the public at large and there was no evidence that the plaintiff treated it as a profession and was constantly involved in such activity making it a means to support his livelihood. With respect, this court finds the plaintiff blowing hot and cold here. On the one hand, he claims that the exclusive appointment was not made public, but on the other hand, he is asserting his rights as an exclusive agent openly here to establish his claim. By his own evidence, the plaintiff had before this, been working as a negotiator for a few friends, including Choy who is a registered real estate agent, and Eric who is a negotiator. The plaintiff is deluding himself that he

A is not involved in providing the service of an estate agency. Clearly, the contract of agency between the plaintiff and the defendant (if any) is tainted with illegality for the reasons stated above. It is therefore void and unenforceable.

Conclusion

B

[137] Based on the totality of the evidence adduced, the court finds as follows:

(a) The defendant failed to prove the existence of the thermal letter dated 17 July 2011;

C

(b) The plaintiff failed to prove the existence of the alleged LOA dated 20 July 2011. The unsigned copy of the alleged LOA dated 20 July 2011 (ie, the original of exhs. P1A and P1B) does not fulfil the criteria for secondary evidence under s. 63 of the Evidence Act 1950. The plaintiff could not prove that both the defendant and the plaintiff signed the

D alleged LOA dated 20 July 2011.

(c) The plaintiff failed to prove that the two LOA dated 2 August 2011, by their form and substance, constitute a legally binding contract. Even if this court were to err in arriving at this finding (which I do not think so), it must be noted that the two LOA dated 2 August 2011 do not

E provide for the plaintiff's exclusive appointment for 12 months. As such, the appointment is terminable at any time. The defendant terminated the plaintiff's appointment on 4 October 2011. There is therefore no breach of the agreement by the defendant.

F (d) After 4 October 2011, the plaintiff played no role at all in selling the defendant's lands.

(e) The plaintiff was not the effective cause of the sale of the defendant's lands. The defendant's eventual sale of 11 lots of her lands to Aliran Peluang was through the efforts of DW1 and DW3, and of herself in

G negotiating the sale directly with the CEO of the Dijaya Group in Singapore. The sale and purchase agreement was not prepared by the plaintiff. It was executed in Singapore. The sale took place eight months after the termination of the plaintiff's appointment on 4 October 2011. It involved 11 different lots of lands, and not the same set of 12 lots

H which were the subject property of the plaintiff's appointment.

(f) At best, the plaintiff's efforts during the period of his agency were preliminary. The price was never agreed upon with Dato' Tong of Dijaya. No offer was made to purchase the subject property by Dijaya up to the date of termination of the plaintiff's appointment on 4 October

I 2011.

(g) The consideration or object of the alleged LOA dated 20 July 2011 and the two LOA dated 2 August 2011 is forbidden by law (see s. 24 of the Contracts Act 1950). The plaintiff's provision of an estate agency service

as an unregistered estate agent contravenes the provisions of the VAEA and the Service Tax Regulations 1975. The effect of the illegality renders the agreement void and unenforceable (see *Chung Khiaw Bank Ltd v. Hotel Rasa Sayang Sdn Bhd & Anor* [1990] 1 CLJ 675; [1990] 1 CLJ (Rep) 57; [1990] 1 MLJ 356 at p. 361).

Decision

[138] Going by the above considerations, the court holds, on a balance of probabilities, that the plaintiff has failed to prove his case against the defendant.

[139] Accordingly, the plaintiff's claim is dismissed. Costs of RM30,000 are to be paid by the plaintiff to the defendant.